

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RITE AID OF NEW YORK, INC.,

Petitioner,

v.

ORDER
07-CV-708

UNITED FOOD AND COMMERCIAL
WORKERS INTERNATIONAL
UNION LOCAL ONE,

Respondent.

This case was referred to Magistrate Judge Hugh B. Scott, pursuant to 28 U.S.C. § 636(b)(1). Petitioner filed a petition to stay arbitration and respondent filed a cross-petition and motion to compel arbitration. On March 10, 2008, Magistrate Judge Scott filed a Report and Recommendation, recommending that petitioner's petition to stay arbitration be denied and respondent's cross-petition to compel arbitration and its motion seeking the same relief be granted.

Petitioner filed objections to the Report and Recommendation on April 7, 2008 and respondent filed a memorandum in opposition to the petitioner's objections on April 30, 2008. Oral argument on the objections was held on October 29, 2008.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which

objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and Recommendation. In addition to the cases cited by the Magistrate Judge, the Court finds that 1199 SEIU, United Healthcare Workers East v. Rite Aid, 2008 WL 762090 (S.D.N.Y. March 24, 2008) also supports the respondent's position. In that case, as here, the dispute centered around whether a particular provision of the collective bargaining agreement applied to non-union employees of newly-acquired Rite Aid stores. This Court finds that the issue of whether a particular provision of the collective bargaining agreement gives the Union the right to visit non-union employees is a question of interpretation of the collective bargaining agreement.

Accordingly, for the reasons set forth in Magistrate Judge Scott's Report and Recommendation, petitioner's petition to stay arbitration is denied and respondent's cross-petition to compel arbitration and its motion seeking the same relief is granted.

SO ORDERED.

s/ Richard J. Arcara
HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: January 23, 2009